

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

-vs-

Case No. 17-CR-6-JDP

ADAM EDWARD MARANTO,

Madison, Wisconsin

March 3, 2022

Defendant.

10:14 a.m.

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STENOGRAPHIC TRANSCRIPT OF JUDICIAL REVIEW  
HELD BEFORE CHIEF U.S. DISTRICT JUDGE JAMES D. PETERSON

APPEARANCES:

For the Plaintiff:

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BY: ELIZABETH ALTMAN  
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For the Defendant:

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Also appearing: ADAM EDWARD MARANTO, Defendant  
BRAD SCHALOW, U.S. Probation Officer  
(Appearing telephonically)

Jennifer L. Dobbratz, RMR, CRR, CRC  
U.S. District Court Federal Reporter  
United States District Court  
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1 (Proceedings called to order at 10:14 a.m.)

2 THE CLERK: Case No. 17-CR-06-JDP-1, the *United States*  
3 *of America v. Adam Edward Maranto*. Court is called for a  
4 judicial review.

5 May we have the appearances, please.

6 MS. ALTMAN: Good morning, Your Honor. The United  
7 States appears by Elizabeth Altman.

8 THE COURT: Good morning.

9 MR. JONES: Mr. Maranto is here in person and with his  
10 attorney, William Jones. Good morning, Your Honor.

11 THE COURT: Good morning to both of you.

12 And, I'm sorry, I had a call immediately before this, so I  
13 don't know if we have the supervising officer on the phone?

14 OFFICER SCHALOW: We do, Your Honor. This is Brad  
15 Schalow. Good morning.

16 THE COURT: All right. Good morning, Mr. Schalow.

17 All right. So we're here on the petition for review of  
18 supervised release. I understand that we have stipulations, but  
19 maybe Ms. Altman can just sort of summarize where we are at the  
20 moment and what the government is seeking.

21 MS. ALTMAN: Yes, Your Honor. You are correct that we  
22 do have a stipulation in Document No. 10 that the defendant  
23 admits to the violations, that is, a conviction in state court  
24 for possession of child pornography. The guideline range is  
25 then 8 to 14 months. The government would, as it does often in

1 cases like this, not always but often, would recommend that be  
2 served concurrent to his time in state court since it is the  
3 basis for the revocation. It's the same conduct, I guess, and  
4 he did get a very long sentence in state court and has been  
5 sitting in county jail for three years. So we think that that's  
6 the appropriate sentence as far as custody.

7 As far as supervised release, the defendant objects to  
8 three, I think, conditions --

9 MR. JONES: Two conditions.

10 MS. ALTMAN: Two conditions, the polygraph and the  
11 financial condition. The government believes both of those are  
12 warranted for the reasons in the revocation summaries. I can  
13 expand on that if the Court wants.

14 We would also ask though that he be -- a term of supervised  
15 release of life be imposed to follow his release from custody so  
16 that he remains on federal supervision for life. I believe  
17 that's what he had before, and considering that this is at least  
18 his second offense of this type, he's shown that he needs to  
19 have the federal supervision to control his behavior to the  
20 extent it can be controlled at all.

21 THE COURT: Okay. And so if I understand correctly  
22 then, Mr. Jones, you agree with that proposal in terms of the  
23 sentence being run concurrent, and given the length of the state  
24 court sentence, the concurrent versus consecutive is really the  
25 decisive concern here because if it runs -- even if I gave the

1 maximum sentence, if it were to run concurrent with state court,  
2 it would result in no net additional incarceration.

3 MR. JONES: Right, right. However, Ms. Altman  
4 estimated the guidelines at 8 to 14, I think. I thought it  
5 would be more accurate to say 5 to 11 as a Grade C violation,  
6 given that I believe Grade C violations are if you're convicted  
7 of something that's no more than a 20-year max.

8 THE COURT: The Document No. 5 has the analysis that  
9 the maximum term of imprisonment for a Class D felony in  
10 Wisconsin is 15 years, the maximum term of extended supervision  
11 is 10, for a combined total maximum penalty of 25. Therefore,  
12 the most serious alleged violation is a Grade B violation, and  
13 so is --

14 MR. JONES: Could you -- I was just turning to document  
15 5. Could you identify --

16 THE COURT: Sure. It's kind of right in the middle of  
17 the page. The subheading over on the side is *Penalties*. It's  
18 in that second full paragraph. It says the maximum term of  
19 imprisonment for a Class D felony in Wisconsin is 15 years --

20 MR. JONES: Sure. I see that. So the Grade B  
21 violation. I guess my question is the assessment -- and you do  
22 do that academic assessment whether you use the maximum initial  
23 period of incarceration or the total sentence in and of itself.  
24 So we have a guideline of either 5 to 11, I think, or 8 to 14.  
25 If the Court would be inclined to go somewhere between 8 and 11,

1       it would become moot, and I wouldn't object to a concurrent  
2       period of incarceration between 8 and 11. Otherwise, I would  
3       have to -- I'm only just going off of my gut understanding of  
4       how initial confinement and required extended supervision apply,  
5       and I'm under the impression that you use the maximum that could  
6       possibly be sentenced at the time of your first sentence to  
7       identify the seriousness of the offense.

8               THE COURT: Maybe Mr. Schalow can help us out on that.

9               In terms of classifying this as a Grade B or Grade C, what  
10       number do we look at, Mr. Schalow?

11              OFFICER SCHALOW: Yes. Your Honor, I have the  
12       guideline manual open right now, and it says a Grade B violation  
13       is any conduct constituting any other federal, state, or local  
14       offense punishable by a term of imprisonment exceeding one year.  
15       So it just has to meet more than one year imprisonment to be a  
16       Grade B violation.

17              THE COURT: Okay. Yeah. So --

18              MR. JONES: It certainly meets that.

19              THE COURT: Yeah, it does.

20              MR. JONES: Okay.

21              THE COURT: So it is a Grade B violation.

22              MR. JONES: So I guess the only question I had is why  
23       this is -- if the Court -- at one point it said -- it did two  
24       guidelines, one if it's a C or one -- is that because he had not  
25       yet been convicted in the first one? Is that --

1 THE COURT: You're looking at Document No. 3?

2 MR. JONES: Yeah. Perhaps that's the one -- no. Yeah,  
3 yeah. That may have been why I thought that there was a  
4 question of whether it was a C or a B, and I don't see C on the  
5 subsequent so --

6 THE COURT: Well, I think -- Mr. Schalow can confirm  
7 this, but my understanding is that Document No. 5 came after the  
8 conviction, so all ambiguities were removed. It wasn't  
9 necessarily clear what the conviction would necessarily be at  
10 the time.

11 MR. JONES: Right. And I think that I now see that  
12 that was my error when I prepared the memo, so I don't think I  
13 have a good-faith argument to say it's not a Grade B violation,  
14 as the government has represented.

15 THE COURT: All right. Let me just pose one question.  
16 And I'm inclined to accept the idea that, given the length of  
17 the state sentence, that it would be appropriate to run this  
18 concurrent with the state sentence, the incarceration term, but  
19 let me raise the one concern or potential counter-argument, and  
20 that is that we have the state offense, and the state has taken  
21 its punishment for the state offense, but we also, in addition,  
22 have a violation of federal supervision and that there should be  
23 an additional penalty for the violation of the breach of trust  
24 of the federal supervision and there should be an incremental  
25 punishment for that.

1           And I guess I'll start with Ms. Altman, because the  
2           government would be perhaps in the position to press that  
3           argument.

4           MS. ALTMAN: I don't mean to be flip, Your Honor, but  
5           I've made that argument to this court and the other court 20  
6           times and have --

7           THE COURT: What's your win/loss record?

8           MS. ALTMAN: Loss, loss, loss, loss, loss. I  
9           continually lose that argument, Your Honor, and, in fact, you'll  
10          see this afternoon there's another case very similar to this  
11          where we're making the same recommendation. I know that the  
12          case this afternoon the -- it's sort of apples and oranges  
13          because it's two federal convictions, but the sentencing  
14          guideline range is less than the ten years, and so there is sort  
15          of -- he's getting an additional punishment by the distance  
16          between the two. I did not -- I don't know what his guideline  
17          range would have been had this come to federal court, had we  
18          taken the case, but I guess what the Court generally tells me  
19          when I ask for more time on that is that this is a really long  
20          sentence and that the additional nine months doesn't make a  
21          difference really one way or the other.

22          THE COURT: Yeah. I know in some cases I have imposed  
23          an additional term of incarceration to reflect the federal  
24          violation but I think usually not in cases where I'm dealing  
25          with a state sentence of this length so --

1 MS. ALTMAN: And, to be fair to the Court, that's  
2 generally what my sentences are.

3 THE COURT: Yeah.

4 MS. ALTMAN: I'm not usually looking at 24 months and  
5 12 months. I'm usually looking at 10 or 15 just based on the  
6 nature of the cases that I charge, and I think that's why I get  
7 turned down so often. Certainly it isn't because of my advocacy  
8 skills.

9 THE COURT: Of course. It couldn't possibly be that.  
10 No, and I'm inclined to -- I'm inclined to go that way here too.  
11 And if I just look at the circumstances -- so I've got -- how  
12 many more years do we have in the state sentence to serve?  
13 Three or four years now?

14 MR. JONES: Seven.

15 THE COURT: Seven more?

16 MR. JONES: Yeah. I'd also say that given that he got  
17 ten years for what is possession -- one count of possession, I  
18 have to believe they took into consideration in such a long  
19 sentence the fact that he was on supervision. I don't have the  
20 transcript. So it probably impacted the state court in the  
21 length of the sentence also, so it did have some collateral  
22 impact.

23 THE COURT: It's a factor that I consider in  
24 sentencing, so I agree. And I just look -- you know, we look  
25 down the road seven years from now, and then what are we going



1 to accomplish with another couple years in prison, in federal  
2 prison. So I don't feel the need to exact another period of  
3 incarceration as appropriate punishment here. So I agree that  
4 the concurrent term is appropriate.

5 The guidelines on revocation are so coarse -- they're not  
6 very fine-grained -- so, you know, I have my issues with the  
7 guidelines in original sentencing. I find the guidelines kind  
8 of really highly uninformative when I just -- they're just  
9 driven by, you know, Class A, B, C violations, and I just have  
10 these rough, rough measures here. In this case, I take this as  
11 a very serious violation, so it might warrant a sentence, you  
12 know, longer than 14 months, but, again, that's just -- it does  
13 become kind of academic when I have such a long state sentence.

14 So I will impose -- well, I'm inclined to impose -- I've  
15 got to hear from Mr. Maranto first, but I'm inclined to impose a  
16 guideline sentence and run it concurrently, so that's what we'll  
17 do. I don't find the guideline especially informative, but it  
18 doesn't make sense to stress over it when it's not really going  
19 to make any actual difference in Mr. Maranto's life. Then we're  
20 going to have a debate about the conditions, but maybe I should  
21 hear from Mr. Maranto or at least give him the chance to talk  
22 before we turn to the conditions.

23 I've tipped my hand very strongly about what I am inclined  
24 to do on your sentence, Mr. Maranto, but before I actually  
25 impose it, you've got the right to be heard. So you don't have

1 to say anything, but I'd be eager to hear from you if you have  
2 anything to add.

3 THE DEFENDANT: As far as the length of the -- what  
4 you've described, it would be -- it's pretty clear that it's  
5 appropriate in this situation, and I don't contest it.

6 THE COURT: Okay. All right. Very good.

7 All right. So in terms of the sentence, I'll impose the  
8 14 -- I'll revoke. I think it's mandatory given the nature of  
9 the offense here. It's certainly warranted, so I will revoke.  
10 I'll impose a 14-month sentence, and I will run it concurrent to  
11 the state court sentence.

12 Then in terms of the conditions -- and then I don't know if  
13 we have any argument about the term of supervision. I'm  
14 inclined to reimpose the life term of supervision. I think we  
15 have a long history of violations here, and I can't -- I was  
16 more focused on the objections to the conditions. I don't know  
17 if Mr. Jones responded to the length of the supervision.

18 MR. JONES: I didn't. I have spoken with Mr. Maranto,  
19 and he understands it would be a bit odd to be advocating for  
20 something less than what he had -- had already been imposed, but  
21 he did want to go on record to say it just -- as someone -- I've  
22 never been on life supervision. So he is facing life  
23 supervision, and as someone on life supervision, his take is  
24 it's somewhat unproductive to not have some light at the end of  
25 the tunnel where you have the incentive to really work on it and

1 be successful on supervision if it's just the rest of your life  
2 facing you. I don't know what options people have to shorten  
3 that if they do well, but I don't know what good-faith argument  
4 I could make to say, well, having violated, he should have it  
5 shortened. It does cite a lot of good behavior as far as his  
6 work history and completing sex offender treatment, but we are  
7 facing revocation for similar behavior.

8 So he may want to speak more about whether -- as someone  
9 who is facing lifetime supervision just for -- to be heard on  
10 how he thinks that may be a positive and negative as far as his  
11 rehabilitation.

12 THE COURT: Sure.

13 MR. JONES: I think I'm just kind of voicing what he'd  
14 like to be said. I don't really have a position on what a  
15 good-faith argument would be.

16 THE COURT: Let me ask him, and then I'll ask Mr.  
17 Schalow about the question of early termination of a life term  
18 of supervised release, because I think you can petition for a  
19 termination of the life term just like you can petition for  
20 early termination of a term of years. Obviously, the case you  
21 would have to make would probably have to be much more  
22 compelling obviously rather than knocking off the last year of a  
23 five-year term of supervised release. That would be a different  
24 thing, but let's confirm that first.

25 Mr. Schalow, am I correct you can petition to terminate a

1 life term just as you can do a specified term?

2 OFFICER SCHALOW: Yes, I believe so, Your Honor.

3 THE COURT: Yeah. So, like I said --

4 MR. JONES: That would be the motivation, sure.

5 THE COURT: All right. Mr. Maranto, do you want to  
6 speak on the issue of the term of supervised release that would  
7 follow?

8 THE DEFENDANT: I would, and I agree with my attorney  
9 in that while, yes, I was imposed a lifetime supervised release  
10 sentence from Judge Rafeedie in California, over the period of  
11 time that I have been on supervised release, it has been more of  
12 a -- it's been just sitting in the back of my mind that there is  
13 no light at the end of the tunnel. There is no way to become  
14 rehabilitated, like you said. With knowing that you're on  
15 lifetime supervised release, there is no rehabilitation. I  
16 mean, it can't exist.

17 So I would -- I move the Court to, number one, inform me,  
18 as I was not aware that I could petition to get off lifetime  
19 supervised release before. I suppose that's an oversight on my  
20 part, but I'm not going to take full responsibility for that  
21 oversight. At the same time, Your Honor, I would ask you to  
22 give me some kind of light that I can see at the -- we keep  
23 using the cliché "at the end of the tunnel" -- something that I  
24 can work forward to, something that I can see tangibly instead  
25 of just an up-in-the-air thing that nobody is really going to --

1       you know, "Well, I don't know. I don't know. I don't know."  
2       Well, I know at that 20-year mark, if I can make it there --  
3       well, if it's 20 years, Your Honor, and I go clean, I can feel  
4       pretty strong to say, since I'll be in my 70s by then, that,  
5       yeah, the federal government would have done their job,  
6       absolutely, and there would be no further violation.

7               So I know the Court is looking for something a little bit  
8       more compelling than that but --

9               THE COURT: I'm always looking for something more  
10       compelling, but that's just my job so --

11              THE DEFENDANT: Your Honor --

12              THE COURT: Let me ask you a couple of questions. I  
13       take your point, but let me observe it -- make a couple of  
14       observations, and then you can respond if you've got anything  
15       further.

16              So it seems to me there are kind of two issues. One is the  
17       actual fact of rehabilitation, and one is the -- whether you're  
18       being supervised. And so it's possible for you to be  
19       rehabilitated and still be supervised, and when I say  
20       "rehabilitated," what I mean is that you are able to control --  
21       you either go through treatment and transform your sexual  
22       interests so that you're no longer sexually interested in  
23       children or that you are able to so control your sexual interest  
24       in children that it is such a small factor in your life that you  
25       no longer pose a threat of reoffense. So to me that's what

1 rehabilitation is. So a person could be fully rehabilitated and  
2 still be on supervision. And so that's why I disagree with the  
3 idea that rehabilitation is impossible if you have a life of  
4 supervised release -- a life term of supervised release, because  
5 you could be rehabilitated and be on supervision.

6 And then the second observation is that there are all sorts  
7 of incentives that you have to succeed on supervision even if  
8 your supervision is not terminated because supervision varies.  
9 The level of scrutiny that you get varies depending on your  
10 performance. So the probation office has people that are deemed  
11 to be at low risk, and they get light supervision. The number  
12 of meetings that they have to have with their PO over the course  
13 of a year is lower. You have people on intensive supervision  
14 where they have -- they have to meet every week with their PO.  
15 So that varies. How many polygraphs, whether you get polygraphs  
16 at all, the liberty that you have in terms of where you go and  
17 what you do, all of that varies depending on your performance on  
18 supervision. So even if you were on a life term of supervised  
19 release, there are enormous incentives to perform well because  
20 you can have great freedom even while being on supervised  
21 release.

22 So I do see -- there's no proverbial end of the tunnel, but  
23 there's still all sorts of good things that can come from  
24 performing well on supervised release. And then it does seem to  
25 me there is that light at the end of the tunnel that you can

1 petition for an early termination. And I don't want to mislead  
2 you. You know, I know I've talked with the people who supervise  
3 sex offenders, and, you know, commonly sex offenders who have  
4 crimes against minor children are deemed to be kind of a more  
5 intractable kind of risk situation than somebody who commits a  
6 property crime. So I don't want to mislead you about, you know,  
7 how eager the supervising officer is going to be to early  
8 terminate somebody who is on a life of supervised release yet --  
9 you know, which, frankly, is pretty rare, at least in this  
10 district. Now, your life term was imposed by somebody else, but  
11 when I look at this case that's in front of me here, I think  
12 this is one where I'd be inclined to impose a life term too  
13 because of the repeat offenses.

14 So I don't want to mislead you about how likely it is, but  
15 there is that possibility if you really perform well, and,  
16 again, in this case category, like others, the older you get,  
17 the less likely you are to offend, you know. We've had some  
18 pretty old sex offenders in this court. But, you know, I do  
19 think there are incentives for you to succeed while on  
20 supervision, and there is that possibility of early termination.  
21 So I don't quite -- I'm not quite persuaded by the idea that  
22 there's no incentives for you to do well.

23 So, anyway, those are my comments. I'm inviting a response  
24 if you had anything else to say.

25 THE DEFENDANT: I do see where you're coming from, and

1 I would have to agree with the second part, the second situation  
2 that you described. Yes, there are a lot of leniencies that can  
3 be given based on one's performance, and being that I agree with  
4 the second part, it doesn't really make any difference if I  
5 agree or disagree with the first part, even though I still do  
6 disagree with that.

7 THE COURT: Uh-huh.

8 THE DEFENDANT: But at the same time, like I said, if I  
9 agree with the second part, the first part really doesn't make  
10 any difference.

11 THE COURT: Yeah. Well, and I understand and  
12 appreciate your position, and I understand how dispiriting it is  
13 to have something that's defined to be a lifetime. So I  
14 understand that, and I've listened to your argument, but I do  
15 think there are lots of incentives for good performance.

16 It's probably appropriate then to turn to the conditions  
17 that are objected to. I'm inclined to agree with the  
18 government's position, but let's have Ms. Altman state it, and  
19 then we can debate a little bit. I think there are -- let's  
20 just start, first, with Mr. Jones' basic perspective, which is I  
21 think he's entitled to conditions that are no more restrictive  
22 than are necessary to serve the interests of justice and mostly  
23 to protect the community here is really the interest that we're  
24 looking at. So fair point. These are some pretty intrusive  
25 conditions, and so he's entitled to have a pretty solid



1 justification for them.

2 But, Ms. Altman, why don't you tell me why should we have  
3 those -- the financial disclosure and the polygraph conditions?

4 MS. ALTMAN: Yes, Your Honor.

5 With the financial disclosure, I think that it's important  
6 for probation to be able to see, first of all, is he working,  
7 where is he working, that sort of thing, which will be -- I  
8 mean, he can report that, but that's a way to confirm that. And  
9 it's also important for them to see where is his money going.  
10 Is he sending it overseas to the Philippines to have people  
11 perform live sex shows, as an example; is he buying a cell  
12 phone; is he buying a game station, all of those things that he  
13 will certainly be limited that he can do. And it confirms any  
14 sort of self-reporting as far as what money is coming in and  
15 where it's going, and in this type of case, you don't think of  
16 that necessarily being as important as in a white-collar case,  
17 but to monitor sex offenders and the things that they can buy  
18 and the contact that they can do, it is important. Is he paying  
19 for internet when he's not supposed to have internet, all of  
20 those things.

21 With regard to the psychosexual evaluations, the condition  
22 simply says that it may involve the use of polygraphs. I don't  
23 think they've ever been required. Who knows what the technology  
24 is going to be in seven years. Maybe polygraphs are -- have  
25 been deemed super reliable and admissible in court. Maybe

1 they've been totally disproved or replaced by something else.  
2 The probation office should have every tool available to assess  
3 the defendant's sexual desires, conduct, that sort of thing, to  
4 protect the community, particularly for this type of crime, and  
5 if a polygraph is needed, then it's a polygraph. If in seven  
6 years something has been discovered about polygraphs that make  
7 them, you know, unusable, then in seven years or eight years,  
8 you know, depending on when he gets out and how the conditions  
9 have been imposed, then maybe it's time for another  
10 conversation, but that's not a conversation for now.

11 THE COURT: All right. All right. I think the  
12 justification for the financial disclosure to me is compelling.  
13 I'll give Mr. Jones a chance to respond once I lay out my view  
14 of it, but bottom line is I think that the -- if it were just a  
15 matter of where he's working, I think we could probably find  
16 that out from other sources. But I do think, critically in a  
17 sex offense case, where the defendant spends his money is really  
18 a critical tool because I think there's so many violations --  
19 cases that I've had where people buy some device that is  
20 internet-capable and it's not disclosed. It provides a good way  
21 of detecting whether the defendant is buying devices or services  
22 that are otherwise violations, so getting access to the  
23 internet, getting access to sex services online, and getting  
24 access to devices. I think it's an appropriate and useful  
25 enforcement tool to make sure that the defendant is compliant

1 with the other conditions of supervision. So I'm very  
2 supportive of that one.

3 The polygraph, here's my view of this: I'm not going to  
4 try -- I'm not going to impose a condition now thinking about  
5 science fiction technology that we might have in ten years.  
6 That wouldn't be warranted. So what I'm looking at is right now  
7 would a polygraph be appropriate, and it is not required that it  
8 be used, but my understanding is that it is, in fact, commonly  
9 used with offenders that are on supervision for sex offenses.  
10 There has never been and I do not expect that an untruthful  
11 response in the polygraph is a grounds for revocation. I  
12 wouldn't accept it as a grounds for revocation, and I don't have  
13 to find the violations to, you know, beyond a reasonable doubt,  
14 but as far as I know, polygraph examinations aren't even  
15 supported as admissible even to a preponderance standard.

16 But that's not really how they're used or why they're used.  
17 They are used, I think, because they are -- and that's not to  
18 say they're utterly unreliable. They're reliable enough to  
19 prompt truthful disclosures of the people under supervision, and  
20 it triggers -- and it works both ways, frankly. If we get  
21 truthful -- indications of truthful response, truthfulness in  
22 response to the polygraph examination, it confirms the honesty  
23 of the client under supervision, and it can lead to their  
24 greater freedoms. If there's an indication of deception, what  
25 usually is prompted is a reinterview and often a further

1 disclosure, and the indications of deception can often prompt  
2 further and closer supervision. They're really not used, and I  
3 wouldn't accept them, as a freestanding basis for a violation.

4 And so I have been persuaded, despite my initial skepticism  
5 about the use of polygraph examinations and their invasion --  
6 how invasive they are, that they are a useful tool of  
7 supervision, but they are not themselves a grounds for a finding  
8 of violation. And so that's why I really think that they're  
9 useful. They provide a very useful guide for the supervising  
10 officer to tailor other portions of the supervision, and they're  
11 reliable enough for that. And, again, the polygraph operators  
12 will tell you it's not a lie detector. It is not that. It  
13 indicates that the person is under stress when they are  
14 responding to the questions, and that stress response is a  
15 suggestion of untruthfulness. So it never really tells you  
16 whether you're lying or not. And so the inferences that I could  
17 draw from the polygraph examination would not be enough for me  
18 to find a violation based on the polygraph examination. So  
19 that's why I'm inclined to say, yes, I think it's a useful tool.

20 Now, about the standards and quality of the polygraph  
21 examination, which aren't articulated here, I just don't -- I  
22 don't believe I'm required to and I don't articulate the  
23 standards for any other kind of search or testing requirement.  
24 So I do not specify in the conditions what kind of drug test has  
25 to be used. They use, in fact, different levels. So there's

1 field testing and then laboratory confirmation testing. The  
2 field testing is not reliable. If you had a field test for  
3 cocaine, you wouldn't prosecute just on the basis of the field  
4 test. You'd confirm it with lab testing, but the field testing  
5 is reliable enough to prompt further inquiry. So it's the same  
6 thing with the polygraph. I don't have to specify the quality  
7 of the polygraph examiner or the polygraph machine. They'll  
8 want to have one that is reliable enough for the test, and  
9 because it's sort of at the level of a field test, I think it's  
10 even more -- more to the point that I don't have to specify what  
11 quality polygraph examination is going to be used because I'm  
12 never going to use it for a freestanding violation.

13 So, Mr. Jones --

14 MR. JONES: Okay.

15 THE COURT: -- a chance for your last-minute --  
16 last-ditch rebuttal.

17 MR. JONES: Sure, sure. Thanks.

18 As it relates to the financial, I mean, I can appreciate  
19 that, sure, you could identify that someone has signed up for an  
20 internet provider by demanding his bank records. Sometimes  
21 those are automatically withdrawn or a payment online might show  
22 what's this to, you know, whatever, Spectrum? Do you have  
23 another internet provider? I get that it could be used as a  
24 tool, but the way that the condition is worded here is really  
25 unfettered demand for all financial, you know, information, and

1 financial information could really stretch out to a lot that  
2 could be tenuously connected. And I just think that it's really  
3 not at all -- it's almost anything and any -- anything that has  
4 to do with financial transactions would be justified to demand.  
5 So the objection is, in part, that it's not sufficiently  
6 structured to be specifically restrictive or intrusive to  
7 address that.

8 So if it said any financial record, you know, based upon  
9 some sort of, you know, probable cause that he has -- "I think  
10 you're using other internet; let me see your bank account for  
11 that purpose," that would be justified, but this is a really  
12 wide-open power to the agent to say, you know -- and it's just  
13 so -- because I just want to review your financials, finances,  
14 and I don't have to tell you why or that I believe there's  
15 something there. I just want it. It's just such an impediment  
16 to people moving about in their life. Imagine if I had to come  
17 up with all -- you know, everything. You know, show me all the  
18 payments you've made to help your kid in college. You know,  
19 God. Okay. I guess I could put it all together, but that would  
20 stop me in my tracks as far as trying to just get on with what's  
21 going on, and if there's no significant basis for the belief  
22 that there's something going on, there's just nothing there.

23 So I just think that it's too -- I guess the  
24 counter-argument would be, yes, it could be used for that, but  
25 it could also be used just too widespreadly, and it would

1 just be -- it just obstructs the daily existence of these type  
2 of people, these people that are just trying to go it. So that  
3 would be my argument as far as the extensiveness of it, the  
4 broadness of it.

5 And then as it relates to the polygraph, I mean, do you  
6 have some ability to say, you know -- they specifically state  
7 polygraph for a reason here, but, you know, polygraphs also  
8 could prompt false confessions and create all sorts of problems.  
9 "Hey, it says you're not being honest about viewing child  
10 pornography. Come on. I mean, you're lying to us." So some of  
11 the people are going, well -- you know, they find themselves --  
12 imagine the panic if you hadn't done anything wrong. "Well,  
13 maybe I watched something on -- when I was at work or something.  
14 Maybe I'm thinking of the one time I saw it." And since it's  
15 not particularly compelling science as it relates to you are  
16 lying or not, you're just under stress, well, who isn't? I  
17 mean, unless you're completely in control of your faculties, it  
18 would be very stressful to take a polygraph because you're like,  
19 "What if I fail this even though I'm telling the truth?"

20 So I'm not particularly championing this cause. I'm  
21 championing my client who asked me to raise those two because he  
22 has been going through, and he's saying it's just not -- it  
23 doesn't work. It doesn't do what people think it's doing. It's  
24 kind of breaking down maybe the trust between the agent and the  
25 person being supervised, and if the Court would require some

1       corroboration that he's lying, why not -- you know, why not just  
2       bring that corroboration? But it may be an exercise that may be  
3       causing more damage than help, at least that's what I hear from  
4       Mr. Maranto, and I've done a few of these -- it seems there's  
5       been more and more reviews of these child porn. Maybe the  
6       Federal Defender's has just decided to send the appointments to  
7       me, but I've done a few lately. And it seems like there is kind  
8       of a bit of a broken record, and you've heard all of them, that  
9       they have this issue with the use of the polygraph, and since  
10      the only chance really to communicate about these issues are at  
11      the time that they're being imposed, I think Mr. Maranto is  
12      raising it and just wanted to express that he -- it's not as  
13      helpful as people might think in addressing knowledge. And he  
14      obviously wanted to talk a little about it, but those are the  
15      two legal arguments I'd make in response to the government's  
16      position or justification for it.

17               THE COURT: All right. Mr. Maranto, go ahead. You can  
18      speak up for yourself.

19               THE DEFENDANT: Okay. As far as financial oversight,  
20      I -- to be honest with you, I have no problem with financial  
21      oversight, okay? I have no problem with, you know -- if Brad  
22      wants my records, he can have them, and, you know, he wants  
23      them monthly reports, he can have them all filled out. I have  
24      no problem with that. But he will tell you that there are times  
25      when, I mean, I'm at home, okay, and either the house is



1 clean -- I know the house wasn't clean three years ago, but the  
2 house is clean. There's really nothing to do, and I'm looking  
3 for something to entertain myself -- and, yeah, I'm 48, but I'm  
4 a Nintendo baby, so, you know, I grew up with that kind of  
5 thing, and it's enjoyable for me, and it keeps me off the  
6 streets. They say that, you know, the devil's hands is the  
7 hands of being idle, and it's true for the most part.

8 So I would ask that, while I do agree with financial  
9 oversight, if there could be not necessarily a stipulation but a  
10 suggestion saying that it is true that Mr. Maranto sometimes  
11 needs some entertainment at home, you know, instead of just the  
12 radio, and if, you know, my PO can, you know, can kind of talk  
13 about it and say, "Okay. Well, yes, you can have this, but you  
14 can't hook it up to the internet," okay, or something like that,  
15 that would be great. That would take that whole concern and  
16 just squash it and say -- then I'd say, "Okay. Go ahead and put  
17 it on there then," okay? Now --

18 THE COURT: Now, let's just address that one because  
19 that one -- I haven't specifically had to address the video game  
20 issue, but it is the same kind of concern that I have when I  
21 have a condition in a case like this where we say no recording  
22 devices without permission. You can't get a cell phone without  
23 a recording device on it now, and so that is one where I have  
24 clarified that, yes, I'm going to put in the condition that  
25 there be no recording devices, but it is not my intent that the

1 defendant on supervision is going to be cut off from the entire  
2 modern world and can only communicate by telegram. And so  
3 that's one where, you know, we're looking down the road. I  
4 don't know what kind of cell phones are going to be available  
5 seven years from now, but it's not my intent that you be cut off  
6 from the need to communicate with the rest of the world. The  
7 same analysis would apply to the Nintendo video games, and if  
8 you can't resolve it with your supervising officer, you can  
9 always petition the Court to address it.

10 And so on the video game issue, I would say I'm sympathetic  
11 to this concern. I think having some entertainment would be  
12 appropriate, and so having a video game console, not a problem.  
13 Not internet capable, because video game consoles and Roku  
14 devices, all sorts of apparently -- to normal civilians who know  
15 enough to hook up a Roku device but don't really know what's  
16 under the hood, it seems like an innocent device, but they can  
17 be put to illegitimate uses by people who are tech savvy. And  
18 so having reasonable controls on the video game console, that  
19 seems appropriate, but I would not say that you can't play video  
20 games. And if you have difficulty working it out with your  
21 supervising officer, bring it to the Court, and we'll kind of  
22 figure out appropriate parameters to make sure that what appears  
23 to be an innocent device is used for innocent purposes. So I'm  
24 supportive of that.

25 THE DEFENDANT: Okay. Thank you.

1           So I really don't -- while I don't really see the need for  
2           it, I don't have a big enough objection to financial oversight  
3           to compel the Court to accept that --

4           THE COURT: Yeah. And let me just finish up my  
5           response, because Mr. Jones raises, I think, a fair point: Why  
6           not treat the financial conditions like the search conditions,  
7           which is to say, the search has to be based on a reasonable  
8           suspicion? So we authorize probation officers to search the  
9           residence of the offender if there's a reasonable suspicion of  
10          search. And here's my answer to that, and that is that there  
11          have to be some searches that can be just, I would say, just  
12          prophylactic searches to make sure that there aren't  
13          illegitimate uses of funds, for example, and I think that is an  
14          appropriate way that is -- I don't think is unduly invasive to  
15          look at a person's assets and liabilities and their income and  
16          expenses to see if there is illegitimate activity going on. I  
17          don't think that needs to be supported by a reasonable  
18          suspicion, partly because I don't think it's as invasive as  
19          coming and tossing your apartment looking for contraband.

20          And so that's why I think I wouldn't impose that  
21          restriction on the financial disclosures partly because I just  
22          don't think it's as invasive as a search of your home. I mean,  
23          after all, I have to disclose all my -- you know, where my money  
24          goes annually, and a lot of people who are in positions of  
25          public trust have to make very searching financial disclosures,

1 and so it's just not as searching -- not as invasive as having  
2 your house searched. So that's why I think it's appropriate to  
3 have that condition without the requirement of being probable  
4 cause or even reasonable suspicion.

5 Okay. So on to the polygraph then.

6 THE DEFENDANT: Yes. On to the polygraph. Some of  
7 these the Court may not be aware of, and I do invite the Court  
8 to do all their fact checking as much as they like. The  
9 polygraph actually started as a heart monitor machine in 1958,  
10 and it has -- at one point it was noticed by law enforcement,  
11 and it wound its way into a situation in that it kind of grew.  
12 It became a breathing monitor, and it became a movement monitor,  
13 and now it's -- it checks your iris, and it uses an algorithm to  
14 measure how much your eye moves during the answer to a question.  
15 But like Mr. Jones said, there is not a single time that anybody  
16 goes into a polygraph test completely confident that they're  
17 going to pass it, and the reason why is because they already  
18 know that there's some degree of inadequacy in the responses of  
19 the polygraph.

20 One thing when someone is looking at the polygraph  
21 argument, you really have to look at the reason for a lie. The  
22 reason someone lies is to deceit or deceive someone else without  
23 the knowledge of that someone else, okay? That's the reason for  
24 a lie. Now, one interesting fact is that no other result of  
25 anybody else's polygraph has anything to do with an individual

1 polygraph. Everything is different. As a matter of fact, as  
2 the very first thing that they do, they do what's called a  
3 baseline test, and this baseline test is flawed because what  
4 happens is the -- and this has happened every time that I've  
5 gone to take a polygraph. That's how I can say this.

6 What the polygrapher will do is they will say, "Okay.  
7 Write a number down on this piece of paper," and you write the  
8 number down on this piece of paper. Okay. And then he takes  
9 it, and he tapes it to the wall, and he says, "Okay. Now, look  
10 at it, and now tell me did you write the number one?"

11 And then if you wrote the number three, you say, "Yes."

12 "Did you write the number two?"

13 "Yes."

14 "Did you write the number three?"

15 "No."

16 That's how they take the baseline. There's a problem with  
17 it though. The person that you're giving the answer to already  
18 knows whether it's a lie or not, and that's where the flaw in  
19 the base test is. That happens every single time the polygraph  
20 is given.

21 Another fact is that over two questions, the accuracy just  
22 plummets. I mean not -- not like -- it plummets. And the way  
23 the polygraphs are given today or as they were given three years  
24 ago, while, yes, in several cases it's right and in several  
25 cases -- a broken clock is correct two times a day, okay? Now,

1 I'm not saying the polygraph is worse than that. I'm not saying  
2 that. But what I am saying is that the polygraph being used as  
3 a tool only on sex offenders now -- I don't know if the Court  
4 knows about that. They do it only on sex offenders or under,  
5 you know, some kind of existential circumstance, and, yes, while  
6 I am a sex offender and while, yes, you know, there has been a  
7 violation here, Mr. Jones here not too long ago, he said that --

8 MR. JONES: Hang on. Can I talk to him for a second  
9 about what we may have talked about and --

10 THE COURT: Sure. Yeah. Go ahead and counsel.

11 (Discussion held off the record between Mr. Jones and the  
12 defendant.)

13 MR. JONES: I just wanted to give him --

14 THE DEFENDANT: Okay. Yeah. Mr. Jones, he made the  
15 point not too long ago that one of the issues that is with the  
16 polygraph is false confessions, and I can say this is true  
17 because I've done it. I have also been able to -- I mean, this  
18 is kind of -- I have also -- I have also been able to control  
19 what the machine outputs, not every time, not all the time, but  
20 if I really put my mind to it, I can control those faculties  
21 that are supposedly involuntary. They're not involuntary. You  
22 can train yourself to control them. You can train yourself to  
23 slow your heart rate.

24 You know, there's a very large website, an organization,  
25 right now. It's -- you can read all about it at

1 antipolygraph.org. It gives all these points and more, many  
2 more, on why the polygraph should be considered not necessarily  
3 a tool as much as a, well, novelty really. Brad will tell you  
4 that -- well, actually, no, this is when I was under Tracy.  
5 There was one polygraph that I went in, okay, and after the  
6 polygraph, the administrator, he, you know, called the  
7 supervisor, and, you know -- you know, a fire drill went off,  
8 and apparently, you know -- now, I didn't -- but that was  
9 chalked up as a fluke. Well, how many of these flukes go on,  
10 because it was -- the readings were just off the fricking chart  
11 for -- I mean, for every single question. Forgive my French.

12 But the point is while in some cases, in some specific  
13 testings with the polygraph, it seems to be able to detect  
14 stress response to a specific question, it may have been the  
15 question before. It may be a question that he -- that the  
16 person knows that they're going to answer in the future. It  
17 doesn't have to be that specific question. There's all kinds --  
18 Judge, there's all kinds of problems with the polygraph, okay?  
19 And I know that you just got done saying that, yeah, well, you  
20 look at the results of the polygraph. You're not going to sit  
21 there and say, "Okay. Well, you're revoked based off of this  
22 polygraph." I know -- you just said -- you just said that. I  
23 was listening, okay? But at the same time, it's not the tool  
24 that it's, well, made out to be because -- I mean, yes, law  
25 enforcement is pro-polygraph. Yes, of course they are. But to

1 the other side of the entire population, well, it's a -- I kind  
2 of agree that it might -- it might inspire the parole agent to  
3 maybe sit down and ask a couple of questions afterwards to kind  
4 of clarify, but it's been my experience that when I go up --  
5 when I've taken polygraphs and I've been truthful and it's  
6 been -- it said I was, you know, lying but I was actually  
7 telling the truth, which has happened -- I can actually count,  
8 one, two, three -- I'm now over ten, so I'm going to stop there.  
9 You know, there's always going to be a post-interview after a  
10 polygraph at the -- well, the way the Eau Claire office runs it,  
11 there's a post-interview, okay? And that -- and then -- but  
12 when you're done with the test, the administrator tells you what  
13 the results are. "You failed this question; you failed that  
14 question," okay? And your parole agent is listening all the  
15 time on one of the monitor things.

16 THE COURT: Uh-huh.

17 THE DEFENDANT: So they already know. And so you go up  
18 there, and you talk to them, and, you know, they are making  
19 their entire discernment on your situation or performance based  
20 off of your -- the output of that machine, and it could be  
21 wrong, as I've said. And as a result, then the parolee would  
22 then be either sanctioned or it would be -- you know, have some  
23 other requirement that is not warranted because it's not true,  
24 but yet the machine -- well, the machine says, and you were  
25 asked three different times. That's part of the problem. You



1       were asked three different times. That's part of the problem.

2               THE COURT: Uh-huh.

3               THE DEFENDANT: The more questions asked -- it doesn't  
4       matter if it's the same question one, two, three times. The  
5       more questions, the more stressful someone gets.

6               So, Your Honor, it is true, and I believe the state has  
7       commented that in no uncertain terms, there is no machine that  
8       can detect a lie, okay?

9               THE COURT: Uh-huh.

10              THE DEFENDANT: There is only this machine that has no  
11       formal training for it. Every person that administers  
12       polygraphs, they do it a little differently, and they'll tell  
13       you that. It's not something that you get like a two-year  
14       degree in, or it's not something that you go to a trade school  
15       or anything like that. It's basically self-taught, and I don't  
16       think it should be -- it should be used in a situation in which  
17       the parolee could very well may be sanctioned for telling the  
18       truth, but this machine that doesn't know, you know -- that  
19       doesn't know anything but whatever the keys are, but this  
20       machine is telling me that I'm lying, but, I'm sorry, I was  
21       there, you know.

22              And so those instances where the machine is wrong kind  
23       of -- it instills a little anger in the person that took the  
24       test, especially when they're in front of their PO in the  
25       post-interview and they say, "Well, there was some deceit that

1 was measured here." And I said, "Well, how do you know it was  
2 deceit? Where is this deceit coming from?" Every single time I  
3 have been in the post-interview and we've talked about a failed  
4 question, it's always been about deceit, deceit. It's, like,  
5 stamped "deceit" just because one reading was a little higher  
6 than the other or whatever the case is. The polygrapher said  
7 that, "Well, he's lying so -- this is deceit so, therefore, he's  
8 lying," and that's what your next six months -- you're going to  
9 be dealing with this extra sanction or sanctions that you  
10 shouldn't have to because it was -- you were telling the truth.

11 THE COURT: Uh-huh.

12 THE DEFENDANT: So I don't think it should be used as a  
13 tool as, you know, as strongly as it is. In cases that -- such  
14 as this one, okay -- this case is about child pornography. I  
15 mean, I can't -- I mean, I can be ashamed of it, but at the same  
16 time, I can't -- you know, I can't -- I can't let it, you know,  
17 bury my head in the sand and just sit there for the rest of my  
18 life. I can't do that. I have to move forward because life is  
19 moving forward, and it doesn't stop, okay? And when Brad calls  
20 me or I get a letter in the mail from somewhere in Wisconsin  
21 saying that I have to show up at Eau Claire to take a polygraph,  
22 it's not that I'm saying, "Oh. Oh, no. I've done this. I've  
23 done" -- no, no, no. It's just the stress of having to go in  
24 there and have a machine tell you whether you're lying or not  
25 and then have your PO, you know, decide the next six months

1 based off of that.

2 I mean, I'm sorry I'm getting a little -- I don't know --  
3 animated, but at the same time, it's a -- it's a point for me.  
4 You know, it's something that I know quite a bit about because I  
5 have done quite a bit of research, and I -- as I said, I don't  
6 think it should be used as the tool it is being used as today.

7 THE COURT: I -- you know, I've talked with the  
8 probation office about the polygraph use, and, you know, when I  
9 got on the bench and I first started encountering it, I shared  
10 all of the concerns about the fact that it was not deemed  
11 accurate enough to be admissible in court, so why should it be  
12 used? And so I raised those concerns with the probation office,  
13 and they arranged, helpfully, a demonstration of a polygraph,  
14 and so they persuaded me of its usefulness, and I'm still  
15 persuaded of that. But, you know, this is the first time I've  
16 had a really fulsome discussion of the issue with somebody who  
17 is on the other end of the machine. So I appreciate your taking  
18 the time to lay out your concerns.

19 I am going to impose the condition in this case, but I  
20 will, again, reflect on the use of the polygraph. I will  
21 discuss it again with the probation office. I'm also going to  
22 have your concerns transcribed so that other people can see it  
23 so, you know, Tracy and the other officers who use it and Lori  
24 Baker, who is the chief probation officer now, can look at it.  
25 So we'll have another discussion about it.

1           Some of your concerns I think I've already anticipated.  
2       Like I said, I recognize the shortcomings of it. Many of the  
3       things that you identified were discussed with the polygrapher  
4       who was there to do the demonstration, so I do recognize -- and  
5       I think the two points that I want to emphasize here is I  
6       recognize the limitations of the accuracy of a polygraph. I  
7       recognize it is not a lie detector, and I know that it is  
8       discussed that the responses to the polygraph are -- it doesn't  
9       say you're lying, but it does say something pretty close to it,  
10      which is the polygraph contains indicators of deception. So the  
11      difference between that and accusing you of lying is a pretty  
12      fine one, so I understand your reaction to it. But, like I  
13      said, I think that in the run of cases, I've been persuaded that  
14      it's accurate enough to be useful, but you've said many things  
15      that make me think about that.

16           But, also, the second point that I want to stress is not  
17      only do I recognize the shortcomings of the accuracy of it, I  
18      would never use the polygraph itself as the basis for a  
19      revocation. So it's -- you wouldn't face that sanction, but I  
20      do take your point that it can have an impact on the conditions  
21      of your supervision, not the legal conditions -- those are  
22      imposed by the Court -- but the implementation of those  
23      conditions for a period of six months or so. So I  
24      recognize that it does have -- if I say it's a useful tool, it  
25      does mean it affects your supervision, so I take your point.

1           As I said, I'm going to impose the condition. I think it's  
2           warranted, but I appreciate having your comments. I will give  
3           them some further consideration, and I'll take it up with the  
4           probation office. So thank you.

5           THE DEFENDANT: Thank you.

6           THE COURT: All right. All right. So I think those  
7           are the only two conditions that you objected to, and so,  
8           otherwise -- let me just confirm that, that we have addressed  
9           the two objections?

10          MR. JONES: Correct.

11          THE COURT: Okay. So I will impose a life term of  
12          supervised release subject to the conditions that are in  
13          Document No. 5. I will read them on the record unless you waive  
14          the reading of the conditions. I can tell that you have  
15          reviewed them, but do you want me to read them on the record?

16          THE DEFENDANT: Your Honor, I've read them, and I've  
17          got five years worth of experience with them, so I really don't  
18          think it's necessary.

19          THE COURT: All right. Very good. Then I won't read  
20          them.

21          I will reiterate that they can be changed during your  
22          supervision. You raised a couple of points here, so if those  
23          points can't be resolved to your satisfaction, the courthouse is  
24          open to you to have the conditions re-evaluated. So you can do  
25          that. And so those are the conditions that I will impose, those

1 in Document No. 5. The term is life. The incarceration portion  
2 is 14 months, and it runs concurrent with your state sentence.

3 You've got the right to appeal my decision to revoke your  
4 supervised release if you think it was wrong, and you've got the  
5 right to appeal the sentence that I've imposed, but if you want  
6 to do that, you've got to do it within 14 days of entry of  
7 judgment, which is the document that will formally conclude our  
8 proceedings here.

9 If you can't afford an attorney to represent you in the  
10 appeal, you can apply for court-appointed counsel to represent  
11 you at government expense. If you can't afford the filing fee,  
12 you can apply for *in forma pauperis* status and do it without  
13 paying the filing fee. And did I say 14 days?

14 MR. JONES: Yes.

15 THE COURT: 14 days or 14 days from any appeal filed by  
16 the government if the government were to appeal.

17 I think I've covered everything, but let's check. Anything  
18 else, Ms. Altman?

19 MS. ALTMAN: Not for me, Your Honor. Thank you.

20 THE COURT: Mr. Jones?

21 MR. JONES: Judge, you said it so quickly I didn't  
22 catch how many months was the --

23 THE COURT: 14. 14 concurrent.

24 MR. JONES: I have nothing -- well, just a minute.

25 (Discussion held off the record between Mr. Jones and the

1       defendant.)

2               MR. JONES:  No, nothing else.

3               THE COURT:  All right.  Mr. Schalow, is there anything  
4       else I need to touch on?

5               OFFICER SCHALOW:  Nothing else, Your Honor.  Thank you.

6               THE COURT:  Thank you, all.

7               MS. ALTMAN:  Thank you.

8               THE CLERK:  This Honorable Court stands in recess.

9       (Pceedings concluded at 11:17 a.m.)

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1 I, JENNIFER L. DOBBRATZ, Certified Realtime and Merit  
2 Reporter in and for the State of Wisconsin, certify that the  
3 foregoing is a true and accurate record of the proceedings held  
4 on the 3rd day of March, 2022, before the Honorable  
5 James D. Peterson, Chief U.S. District Judge for the Western  
6 District of Wisconsin, in my presence and reduced to writing in  
7 accordance with my stenographic notes made at said time and  
8 place.

9 Dated this 10th day of March, 2022.

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15 \_\_\_\_\_/s/ Jennifer L. Dobbratz\_\_\_\_\_

16 Jennifer L. Dobbratz, RMR, CRR, CRC  
17 Federal Court Reporter  
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